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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: Miami Date: MAY 13 2003

IN RE: Applicant: [redacted]

APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The application was denied by the Acting District Director, Miami, Florida, who certified his decision to the Administrative Appeals Office for review. The acting district director's decision will be withdrawn, and the application will be approved.

The applicant is a native and citizen of Peru who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act (CAA) of November 2, 1966. This Act provides, in pertinent part:

> [T]he status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959 and has been physically present in the United States for at least one year, may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if the alien makes an application for such adjustment, and the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence. The provisions of this Act shall be applicable to the spouse and child of any alien described in this subsection, regardless of their citizenship and place of birth, who are residing with such alien in the United States.

The acting district director determined that the applicant was not eligible for adjustment of status as the spouse of a native or citizen of Cuba, pursuant to section 1 of the Act of November 2, 1966, because she had not established that her marriage was not entered into for the primary purpose of circumventing the immigration laws of the United States. The acting district director, therefore, denied the application.

In response to the notice of certification, counsel asserts that the applicant and her husband submitted sufficient evidence to meet their burden of proving that they have a valid marriage. Counsel states that the officer undermined the weight of the extensive evidence submitted. She contends that in what appears to either be an oversight or a total disregard of the strong evidence submitted, the officer concluded that five explicable discrepancies out of all the questions asked and answered correctly were enough to throw out all of the legitimate and credible evidence submitted in support of the bona fides of the marriage. Counsel states that the enclosed documentation, along with some of the testimony given, is more than sufficient evidence to establish that this was a valid marriage from its inception. Counsel further asserts that the applicant was not put on notice of the deficiency and given a reasonable opportunity to address it before the Service denied her

application; however, the applicant now proffers additional evidence addressing the deficiency.

The record reflects that on March 9, 2002, at Fort Lauderdale, Florida, the applicant married [redacted] a native and citizen of Cuba whose immigration status was adjusted to that of a lawful permanent resident of the United States, pursuant to section 1 of the CAA. Based on that marriage, on April 17, 2002, the applicant filed for adjustment of status under section 1 of the CAA.

At an interview regarding her application for permanent residence on October 17, 2002, the applicant and her spouse were each placed under oath and questioned separately regarding their domestic life and shared experiences. Citing *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983), and *Matter of Phillis*, 15 I&N Dec. 385 (BIA 1975), the acting district director determined that the discrepancies encountered at the interview, a number of which relate to the inception of the marriage, and the lack of material evidence presented, strongly suggest that the applicant and her spouse had entered into a marriage for the primary purpose of circumventing the immigration laws of the United States. The acting district director, therefore, denied the application.

In response to the notice of certification, counsel submits:

1. An affidavit from the applicant explaining why five of her responses to questions given at the interview conflict with her husband's responses.

2. An affidavit from the applicant's husband explaining why five of his responses to questions given at the interview conflict with his wife's responses.

3. Affidavits from friends, their landlord, and his employer.

4. Joint car insurance policy; joint life insurance policy; joint health insurance policy; joint residential lease agreement; joint bank account statements and letter from the bank officer; joint credit card statements and cards; joint telephone and utility statements; and 2002 joint income tax return.

5. Copies of the couple's drivers licenses showing the same address; receipts and statements showing their individual names confirming receipt of mail at the same address; and photographs of their wedding and other events.

The applicant's and her spouse's explanations regarding the basis of the contradictory testimony given at the interview, and the evidence furnished to establish that the applicant's marriage was not entered into for the primary purpose of circumventing the immigration laws of the United States, appear credible.

As the only ground of ineligibility present in this case has now been overcome, it is, therefore, concluded that the applicant has established that she is in fact eligible for adjustment of status to permanent residence, pursuant to section 1 of the Act of November 2, 1966, and warrants a favorable exercise of discretion. Accordingly, the acting district director's decision will be withdrawn, and the application will be approved.

ORDER: The acting district director's decision is withdrawn. The application is approved.